UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

KWENCH SYSTEMS INTERNATIONAL LLC, Plaintiff, v. UPONOR WIRSBO COMPANY, Defendant.	Civil Action No. 1:07-cv-221-JM **Complaint and Jury Demand**

COMPLAINT

NOW COMES the Plaintiff, Kwench Systems International LLC, by and through its attorneys, Devine, Millimet & Branch, Professional Association, and complains against the defendant, Uponor Wirsbo Company, as follows:

NATURE OF THE CASE

This is an action for injunctive relief and damages arising out of the defendant's unlawful scheme to deprive plaintiff of the exclusive use of its proprietary technology in connection with residential multi-purpose fire protection systems. The plaintiff brings claims for patent infringement and violation of RSA 358-A. The defendants' actions were willful and knowing, thereby entitling plaintiff to treble damages and attorney's fees.

PARTIES

1. Kwench Systems International LLC ("Kwench") is a limited liability company organized and existing under the laws of the State of New Hampshire and having a place of business in Dublin, New Hampshire.

2. On information and belief, Uponor Wirsbo Company, formerly known as Wirsbo Company ("Wirsbo"), is a corporation organized under the laws of the State of Minnesota 55124, with its principal place of business located at 5925 W. 148th Street, Apple Valley, Minnesota.

JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity of parties) and 28 U.S.C. § 1338(a) (action arising under an Act of Congress relating to patents).

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400.

FACTUAL BACKGROUND

Kwench's Patents

5. Kwench owns the following patents: United States Patent Number 6,044,911 (the "'911 Patent") entitled "Parallel-Fed Nonstagnant Integrated Water Distribution Network For Domestic Water And Fire Sprinkler Application;" Patent Number 6,241,024 (the "'024 Patent") entitled "Parallel-Fed Nonstagnant Integrated Water Distribution Network For Domestic Water And Fire Sprinkler Application;" and United States Patent Number 6,422,319 (the "'319 Patent") entitled "Water Distribution Network For Domestic Water And Fire Sprinkler Application."

6. The '911, '024 and '319 Patents were all duly and legally issued to Franz P. Haase, III ("Haase"), the inventor, by the United States Patent and Trademark Office.

7. Haase has since assigned all of his right, title and interest in the '911, '024 and '319 Patents to Kwench.

The Residential Fire Protection Industry

8. Kwench is in the business of selling and installing integrated plumbing and residential fire protection systems. The centerpiece of Kwench's residential fire protection systems is the patented technology set forth in the '911, '024 and '319 Patents.

9. Kwench's patented technology represents a significant leap forward in residential fire safety technology and is revolutionizing the residential fire sprinkler industry. Prior to this technology, residential sprinkler systems were not an option for most homeowners, because the systems were stand alone systems that required a separate water line which resulted in stagnant water in the pipes and also created back-flow concerns. The requirement of separate water lines for sprinklers and plumbing also added sufficient expense to residential homes that home owners generally did not utilize them.

10. A change (through and as a result of the efforts of Haase) in the residential fire protection standard promulgated by the National Fire Protection Association ("NFPA") -- namely NFPA 13D, which allows the use of 1/2 inch tubing in a combination plumbing/sprinkler system in one and two-family homes allowed for the possibility that residential sprinklers could be installed simultaneously and as an integral part of a homeowner's cold water plumbing system.

11. The change in NFPA 13D opened the door to new residential fire safety possibilities, and Kwench was the first to go through it by developing new and innovative residential fire safety technology. Specifically, Kwench's patented technology allows homeowners to install residential sprinklers that need not run on a separate plumbing system because water is supplied to each water fixture in the house from multiple conduits which connect through a "multi-port" fitting. The network incorporates multiple multi-port fittings

ensuring that each fixture flows water from a number of routes. Because the plumbing and sprinkler system is integrated, Kwench's technology requires only one contractor to install the system, and only one water line to feed the system. The cost and complexity savings that result from Kwench's technology bring residential fire sprinkler systems within residential reach.

12. Kwench markets its residential sprinkler system under the name "Greenflow."

13. Similar to Kwench, Wirsbo is also in the business of selling integrated plumbing and residential fire protection systems and related components. Wirsbo markets its residential sprinkler systems under the name "AQUASAFE." The AQUASAFE system was and continues to be sold through Wirsbo's existing distribution channels throughout North America.

Wirsbo Licenses Kwench's Technology

14. Franz Haase, the inventor of the '911, '024 and '319 Patents and one of the founders of Kwench was also, for several years, an employee of Wirsbo. While employed at Wirsbo, Haase played an instrumental role in assisting Wirsbo in penetrating the residential sprinkler market, by, among other things, promoting the patented technology which is the subject of this action and training plumbers around the country on the installation of the AQUASAFE system. As mentioned, Haase also played an instrumental role in bringing about the change to NFPA 13D which made integrated residential plumbing and fire protection systems viable.

15. Wirsbo understood the significance of Haase's invention and how the new technology would revolutionize the residential sprinkler industry. Wirsbo, therefore, wanted to become the exclusive licensee of the patented technology in North America.

16. To that end, shortly after the '911 Patent was issued to Haase on April 4, 2000, he and Wirsbo began negotiations over an exclusive License Agreement relating to Wirsbo's use of

the technology covered by the '911 Patent. Haase was a member of Kwench and assigned the patent to Kwench.

17. On December 6, 2000, Kwench and Wirsbo entered into a License Agreement in which Wirsbo, among other things, acknowledged, in clear and unequivocal terms, Kwench's ownership of the '911 Patent. Wirsbo agreed to pay Kwench a royalty on each fire sprinkler head and fitting used in a multi-purpose residential sprinkler system which it sold in North America.

The Rehau Litigation

18. After execution of the License Agreement and while Wirsbo and Haase were selling and promoting the AQUASAFE system throughout the country, Wirsbo learned that one of its competitors in the residential sprinkler industry, Rehau Incorporated ("Rehau"), "sold and offered to sell an integrated fire sprinkler and cold water plumbing system which infringes upon multiple claims of the ['911, '319 and '024] Patents." Through counsel, Wirsbo sent Rehau a cease and desist letter and, contemporaneously, on August 22, 2003, filed an action for patent infringement in the United States District Court for the District of Minnesota against Rehau.

19. Both Wirsbo and Kwench Systems LLC were named plaintiffs in the Rehau litigation.

20. On September 5, 2003, Rehau, through counsel, sent a letter to Wirsbo stating that Wirsbo's claims were without merit as the patents were invalid and/or unenforceable due to the inventor's inequitable conduct in failing to disclose evidence of his own prior public use and disclosure of the alleged inventions before the earliest filing date of the patents. Rehau cited an article published in November 1993 entitled "Residential Sprinkler System Installed For Under 40¢ Per Sq. Ft." which, Rehau claimed, discloses the integrated fire sprinkler and cold water

plumbing system of the patents. Rehau also claimed that the invention was put into public use in 1995 with the sale and installation of a system in a home which, Rehau claimed, was not cited to the PTO.

21. Upon receipt of the Rehau letter, Wirsbo sought advice from counsel concerning Wirsbo's response. On October 16, 2003, counsel for Wirsbo wrote to Dale E. Stroud, Wirsbo's Director of Marketing, in response to Rehau's claims that the patents were invalid and/or unenforceable. Counsel stated that the 1993 article which described Haase's early testing of a residential combined sprinkler and cold water plumbing system predated the earliest possible priority date for the patents and, therefore, constituted prior art.

22. Counsel pointed out, however, that the published article did not disclose all of the elements of each of the claims and that the article, standing alone, did not render each of the patent claims invalid. Counsel also stated that in order for the prior art defense to render the patents unenforceable in their entirety, it must be shown that the applicant "withholds material prior art with an intent to deceive" the PTO.

23. Counsel stated that it was not aware of any evidence to suggest that either Haase or his patent counsel acted with deceptive intent. Counsel advised Wirsbo to authorize an investigation to interview patent counsel and review patent files in order to assess whether Haase or patent counsel acted with intent to deceive. Counsel advised that the investigation would require a total of 5 hours. Wirsbo did not authorize the investigation.

24. Counsel also advised Wirsbo that, in order to assess the prior art issue, counsel would need to conduct a claim by claim analysis comparing each limitation of each claim against the system described in the article. Wirsbo, without seeking the consent of Kwench, instructed counsel to not conduct this analysis.

25. On December 18, 2003, Wirsbo, through counsel, voluntarily dismissed the Rehau litigation without prejudice. Wirsbo did not inform Kwench despite the fact that Kwench was a named plaintiff, represented by the same counsel.

Wirsbo's Scheme to Infringe Kwench's Patents

26. Following Rehau's response to Wirsbo's cease and desist letter and patent infringement complaint, Wirsbo decided not to pursue enforcement of the infringement claims. Wirsbo dropped the litigation against Rehau without performing any of the analysis and investigation recommended by counsel.

27. On March 10, 2004, Wirsbo terminated the License Agreement with Kwench.

28. On or about April 1, 2006, Wirsbo terminated Haase's employment.

29. Wirsbo made a knowing decision to end the Rehau litigation, terminate the License Agreement and, ultimately, terminate Haase, in an effort to avoid its obligations arising out of those patents. If Wirsbo had continued with the Rehau litigation and authorized counsel to perform a 5 hour investigation, Wirsbo would have determined that neither Haase nor his counsel acted with an intent to deceive the PTO and it would have been able to enforce its rights against Rehau. Instead, Wirsbo decided that it would rather market the AQUASAFE technology without having to pay any royalties to Kwench, dismissed the Rehau litigation and terminated the License Agreement, thereby taking the position that the patents were invalid and that Wirsbo could freely utilize Kwench's technology.

30. Since that time, Wirsbo has continued to market and sell the technology covered by the '911, '024 and '319 Patents and has represented to the marketplace that it continues to enjoy the exclusive rights of the technology. In fact, Wirsbo's marketing literature describing

the AQUASAFE system refers to it as Wirsbo's own "patented technology" despite the fact that Wirsbo owns no such patents.

31. To add insult to injury, the multi-port fittings used in Wirsbo's AQUASAFE system are marked with the '911 Patent number further evidencing the fact that Wirsbo has misappropriated Kwench's technology and patents as its own without any authority to do so.

COUNT I

(Infringement of Patent No. 6,044,911)

32. Despite knowing of the '911 Patent, Wirsbo has been and still is willfully infringing, contributing to the infringement of, and/or inducing the infringement of the '911 Patent by making, selling, using, and/or offering for sale the AQUASAFE system which is covered by the '911 Patent.

33. Wirsbo's infringement of the '911 Patent has been and continues to be willful, entitling Kwench to enhanced damages.

34. Kwench has been damaged by Wirsbo's infringement, which will continue unless enjoined by this Court.

COUNT II
(Infringement of U.S. Patent No. 6,241,024)

35. Despite knowing of the '024 Patent, Wirsbo has been and still is willfully infringing, contributing to the infringement of, and/or inducing the infringement of the '024 Patent by making, selling, using, and/or offering for sale the AQUASAFE system which is covered by the '024 Patent.

36. Wirsbo's infringement of the '911 Patent has been and continues to be willful, entitling Kwench to enhanced damages.

37. Kwench has been damaged by Wirsbo's infringement, which will continue unless enjoined by this Court.

COUNT III
(Infringement of Patent No. 6,422,319)

38. Despite knowing of the '319 Patent, Wirsbo has been and still is willfully infringing, contributing to the infringement of, and/or inducing the infringement of the '319 Patent by making, selling, using, and/or offering for sale the AQUASAFE system which is covered by the '319 Patent.

39. On information and belief, Wirsbo's infringement of the '319 Patent has been and continues to be willful, entitling Kwench to enhanced damages.

40. Kwench has been damaged by Wirsbo's infringement, which will continue unless enjoined by this Court.

COUNT IV
(Violation of RSA 358-A)

41. Kwench incorporates the allegations set forth in Paragraphs 22 through 33.

42. Wirsbo's actions, both with respect to infringement of Kwench's patents and proprietary technology as well as its scheme to offer to sell Kwench's technology as its own, constitutes a violation of RSA 358-A.

43. Specifically, Wirsbo's conduct violates the "rascality test" articulated by the New Hampshire Supreme Court given that Wirsbo's unlawful conduct should "raise an eyebrow of someone inured to the rough and tumble world of commerce."

44. Wirsbo's conduct in violation of RSA 358-A is intentional and willful, thereby entitling Kwench to double or treble damages.

45. Kwench is entitled to recover its attorney's fees for Wirbso's violation of RSA 358-A.

RELIEF REQUESTED

WHEREFORE, by reason of the foregoing, Kwench respectfully requests that this Court:

A. By permanent injunction enjoin Wirsbo, as well as its parents, subsidiaries, affiliates, officers, agents, servants, employees and attorneys and all persons acting by or through them from infringing the '911, '024 and '319 patents pursuant to 35 U.S.C. § 283;

B. Award Kwench judgment against Wirsbo for patent infringement and award damages adequate to compensate for the infringement, together with interest and costs, pursuant to 35 U.S.C. § 284;

C. Award Kwench judgment against Wirsbo for willful patent infringement and treble the damages found or assessed, pursuant to 35 U.S.C. § 284;

D. Award Kwench its attorney's fees, costs and expenses, pursuant to 35 U.S.C. § 285;

E. Award Kwench judgment against Wirsbo for violation of RSA 358-A, including double or treble damages for Wirsbo's willful and knowing violation as well as attorney's fees; and

F. Grant Kwench such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Kwench demands a trial by jury on all issues triable of right by a jury.

Respectfully Submitted,

KWENCH SYSTEMS INTERNATIONAL LLC,

By its attorneys,

DEVINE, MILLIMET & BRANCH, P.A.,

Dated: July 20, 2007

By: /s/ Alexander J. Walker, Jr.
Alexander J. Walker, Jr. (NH Bar #9404)
Paul C. Remus (NH Bar #2131)
Daniel E. Will (NH Bar #12716)
111 Amherst Street
Manchester, NH 03101
(603) 669-1000
awalker@devinemillimet.com

J:\WDOX\DOCS\CLIENTS\18032\80420\M1033295.DOC